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Honorable Lee Helms  
Acting Director  
Alabama Emergency Management Agency  
5898 County Road 41  
Clanton, Alabama 35046-2160

Emergency Management Agency –  
Liabilities – Liability Insurance –  
Counties – State of Alabama – Volunteer  
Service Act – Public Information

The Alabama Emergency Management Act authorizes the Alabama Emergency Management Agency (“AEMA”) and county EMAs to involve individuals and organizations that are not part of the government in emergency management activities in support of the Special Population Protection (“SPP”) program.

Confidential information regarding special population individuals, collected in the course of the SPP program, may be withheld from public disclosure. Such information may be disclosed as necessary to particular individuals in order to carry out the emergency management program work for which it was collected.

The Emergency Management Act and Volunteer Service Act provide immunity from civil liability for volunteers and volunteer organizations assisting the SPP program, provided they are acting on behalf of the State or a county. Said immunity is limited to actions taken in

good faith and within the scope of the volunteer program.

The AEMA or county EMAs may help ensure that SPP program volunteers and organizations are immune from civil liability for their participation in the program by documenting their voluntary status and the relationships and purposes that qualify them for immunity under the Emergency Management Act and the Volunteer Service Act.

The AEMA and county EMAs may purchase liability insurance on behalf of volunteers serving the SPP program.

The AEMA may purchase insurance through commercial vendors or through the Risk Management Division of the State Department of Finance. Counties may purchase insurance from commercial vendors, through the Risk Management Division of the State Department of Finance, or may self-insure or participate in a multi-county self-insurance fund.

Dear Mr. Helms:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Emergency Management Agency.

#### QUESTION ONE

To what extent are AEMA or county EMAs authorized by law to involve individuals or organizations that are not a government agency or entity in emergency planning and response activities?

FACTS AND ANALYSIS

The Alabama Emergency Management Act, sections 31-9-1 through 31-9-24 of the Code of Alabama, authorizes the state and its political subdivisions to accept volunteer assistance from individuals and organizations. Section 31-9-18(b) of the Code of Alabama states as follows:

Whenever any person, firm or corporation shall offer to the state, or to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of emergency management, the state, acting through the Governor, or such political subdivision acting through its governing body may accept such offer and upon such acceptance the Governor of the state or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the state or such political subdivision.

ALA. CODE § 31-9-18(b) (1998).

In addition, section 31-9-10(b)(2) says that each political subdivision shall have the power and authority to “appoint, employ, remove or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel and other emergency management workers; provided, that compensated employees shall be subject to any existing civil service or merit system laws.” ALA. CODE § 31-9-10(b)(2) (1998).

Section 31-9-16(b) also refers to “any emergency management worker, individual, partnership, association or corporation” complying with the Emergency Management Act, and subsection (d) of that section defines the term “emergency management worker” to include volunteers as follows:

As used in this section, the term “emergency management worker” shall include any full- or part-time paid, volunteer or auxiliary employee of this state, or other states, territories, possessions or the District of Columbia, of the federal government, of any neighboring county or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this

state subject to the order or control of, or pursuant to, a request of, the state government or any political subdivision thereof.

ALA. CODE § 31-9-16(d) (1998).

### CONCLUSION

The Alabama Emergency Management Act authorizes the AEMA and county EMAs to involve individuals and organizations that are not government agencies or entities in emergency management activities.

### QUESTION TWO

To what extent are AEMA or county EMAs authorized by law to provide confidential information about special-needs populations to such individuals or organizations?

### FACTS AND ANALYSIS

This question is interpreted to refer to information that has been provided by an individual or care-giving organization to the EMA, for the purposes of the Special Population Protection ("SPP") program, and pursuant to an understanding that it will be kept confidential with the exception of being provided to a volunteer assistance person.

The SPP program is being carried out by the AEMA and several county EMAs in the Anniston area to assist persons with special needs who request help to prepare for emergencies. Persons with special needs are those who may not be able to protect themselves in case of an emergency, including persons with mobility, sensory, or communication impairments; unattended children; and persons lacking means of transportation. The SPP program is part of the Chemical Stockpile Emergency Preparedness Program, a national program to enhance community preparedness in areas near U.S. Army chemical weapons storage and disposal installations. Such a site, the Anniston Chemical Activity, is located in Calhoun County, Alabama.

In general, the Alabama public records law requires that information held by public officials must be open to public inspection. Section 36-12-40 states

that “[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40 (2001). Section 41-13-1 of the Code of Alabama defines the term “public record” for purposes of the public records law as follows:

[A]ll written, typed or printed books, papers, letters, documents and maps made/or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer.

ALA. CODE § 41-13-1 (2000).

There are a number of recognized exceptions to this statute, including library circulation records, juvenile court records, identities of Medicaid recipients, and many others. No specific exceptions, however, were found in the Code that would restrict access to the information referred to in the question as interpreted.

In *Stone v. Consolidated Publishing Company*, 404 So. 2d 678 (Ala. 1981), the Alabama Supreme Court interpreted the public records act with respect to two issues: (1) what is a “public record” within the meaning of the statute, and (2) whether it is permissible to withhold public records under certain circumstances. The Court interpreted a public record as one that is “reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens. . . .” *Id.* The Court also held that “[r]ecorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure. . . .” *Id.* Under the public records laws, as interpreted in *Stone*, the information referred to in this question would constitute public records. It may be withheld from public disclosure because it was received in confidence, and public disclosure would be detrimental to the best interests of the public. It may be disclosed as necessary for carrying out the emergency management program work for which it was collected.

### CONCLUSION

There exists ample authority for the management of confidential information regarding special population individuals collected in the course of the SPP program. Such information may be disclosed as necessary for carrying out the emergency management program work for which it was collected. It also may be withheld from public disclosure.

### QUESTION THREE

To what extent does the Emergency Management Act, or other laws, enable AEMA or county EMAs to provide immunity from civil liability to such individuals or organizations?

### FACTS AND ANALYSIS

Immunity from civil liability is not within the power of the AEMA or county EMAs to grant, but is available as a function of Alabama law.

The Alabama Emergency Act, section 31-9-16(b) of the Code of Alabama, provides, in part, as follows:

Neither the state nor any political subdivision thereof nor other agencies of the state or political subdivisions thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, individual, partnership, association or corporation complying with or reasonably attempting to comply with this chapter or any order, rule or regulation promulgated pursuant to the provisions of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

ALA. CODE § 31-9-16(b) (1998).

This provision has not been interpreted by the Alabama courts and so a definitive interpretation cannot be given. A natural reading, however, appears to provide immunity from civil liability for individuals and organizations carrying out emergency management activities under the Emergency Management Act, except in cases of willful misconduct, gross negligence, or bad faith. As discussed above, the act includes volunteers in its definition of "emergency management worker."

In addition, the Alabama Volunteer Service Act, section 6-5-336 of the Code of Alabama, provides, in part, as follows:

(d) Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

(1) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for a nonprofit organization, a nonprofit corporation, hospital, or a governmental entity; and

(2) The damage or injury was not caused by willful or wanton misconduct by such volunteer.

ALA. CODE § 6-5-336 (1993).

The Volunteer Service Act defines the term "volunteer" as "[a] person performing services for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee, or direct service volunteer." ALA. CODE § 6-5-336(c)(4) (1993).

Previous Attorney General's opinions have reached similar conclusions regarding immunity of volunteers:

- A.G. Opinion 93-00147: Volunteer Service Act provides immunity for engineers volunteering their services directly to the Alabama Emergency Management Agency (not through a nonprofit organization).

- A.G. Opinion 92-00146: Individuals serving on local Emergency Planning Committees are entitled to assert immunity from liability under the Alabama Volunteer Service Act.
- A.G. Opinion 92-00097: Volunteer Service Act provides immunity for commissioners of public housing authorities appointed by a mayor.

It should be noted, however, that the Volunteer Service Act provides immunity for individual volunteers, but not for the parent volunteer organizations. Subsection (e) of section 6-5-336 states as follows:

In any suit against a nonprofit organization, nonprofit corporation, or a hospital for civil damages based upon the negligent act or omission of a volunteer, proof of such act or omission shall be sufficient to establish the responsibility of the organization therefor under the doctrine of "respondeat superior," notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (d).

Both the Emergency Management Act and the Volunteer Service Act provide immunity for volunteers assisting the State or a county government in performing emergency services. With respect to nonprofit organizations and hospitals, the two statutes could be viewed as being in conflict: the Volunteer Service Act preserves the responsibility of nonprofit organizations and hospitals that volunteers assist, whereas the Emergency Management Act also exempts from liability any "partnership, association or corporation" engaging in emergency management activities. There is no conflict, however, as long as each volunteer is acting on behalf of a governmental entity, rather than a nonprofit organization or hospital.

### CONCLUSION

The Emergency Management Act and Volunteer Service Act provide immunity from civil liability for volunteers and volunteer organizations assisting the SPP program, provided they are acting on behalf of the State or a county. This immunity is limited to actions taken in good faith and within the scope of the volunteer program.



#### QUESTION FOUR

What steps must be taken for AEMA or county EMAs to provide such immunity from civil liability to such individuals or organizations?

#### FACTS, ANALYSIS, AND CONCLUSION

This question, as stated, is not appropriate for an Attorney General's opinion. The Attorney General cannot suggest courses of action or offer legal advice in response to a request for an opinion. Such information should be obtained from the agency's own legal counsel or from other knowledgeable sources.

#### QUESTION FIVE

To what extent does the Emergency Management Act or other laws enable AEMA or county EMAs to provide insurance coverage to such individuals or organizations?

#### FACTS AND ANALYSIS

Section 31-9-21 of the Code of Alabama authorizes AEMA to purchase insurance against accidental death or injury for emergency management workers, up to certain limits and with the approval of the Emergency Management Advisory Council and the Governor. It provides as follows:

The Director of Emergency Management, upon recommendation of the Emergency Management Advisory Council, with the approval of the Governor, is authorized and empowered and may enter into a contract by bond or policy with an insurance company authorized to do business in this state covering a certain amount to be paid to the employees or trainees of the emergency management corps of this state actually engaged in the performance of duties as such emergency management members or trainees who, by

accidental means, may be killed or injured; provided that the amount paid to any such party on account of accidental death or injury should not exceed the amount or amounts as provided by the Worker's Compensation Act of this state.

ALA. CODE § 31-9-21 (1998). This section refers to “employees or trainees of the emergency management corps” and to “emergency management members or trainees.” These terms, however, are not defined or distinguished from “emergency management worker.”

Authority for purchasing insurance also can be inferred from the general delegation of emergency management authority under the AEMA. State and county officials are authorized and directed to carry out emergency management functions. Section 31-9-3 of the Code defines “emergency management” as follows:

The preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action, or by fire, flood, earthquake or other natural cause. These functions include, without limitation, fire-fighting services; police services; medical and health services; rescue, engineering, air raid warning services; communications; radiological, chemical and other special weapons of defense; evacuation of persons from stricken areas; emergency welfare services (civilian war aid); emergency transportation; plant protection; temporary restoration of public utility services; and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions.

ALA. CODE § 31-9-3(1) (1998). Provision of insurance coverage to protect and encourage recruitment of SPP volunteers could be considered an “activity necessary or incidental” to preparing for and managing a chemical stockpile emergency.

Section 11-91-1 authorizes counties and municipalities to “contract for and obtain and maintain policies of group life, health, accident and hospitalization insurance” for officers and employees. ALA. CODE § 11-91-1 (1994). Section 11-30-1, *et seq.*, of the Code authorizes self-insurance funds by two or more counties “for the purpose of pooling resources and funds to self-insure such counties and/or their officers and employees acting in the line and scope of their employment against loss for money damages . . . .” ALA. CODE § 11-30-1 (1989). Neither of these chapters contains a definition of the term “employee.” Chapter 93 of Title 11, however, which covers actions against counties for the wrongful acts or omissions of officers or employees, does contain a definition of the term that appears to include volunteers. Specifically, section 11-93-1 defines the term “employee” as including “persons acting on behalf of any governmental entity in any official capacity, temporarily or permanently, in the service of the governmental entity, whether with or without compensation . . . .” ALA. CODE § 11-93-1(2) (1994). If county liability for the wrongful acts of such persons is acknowledged, logically it follows that a county may secure insurance to cover such liability.

Moreover, numerous Attorney General’s opinions have affirmed the authority of state, county, and municipal governmental entities to purchase liability insurance to cover the duty-related activities of officers, employees, and volunteers. For example, purchase of insurance by the Alabama Department of Human Resources was approved for volunteer lift van drivers (Opinion to Andrew P. Hornsby Jr., Commissioner, State Department of Human Resources, dated July 19, 1989, A.G. No. 89-00352) and foster care providers (Opinion to Andrew P. Hornsby Jr., Commissioner, State Department of Human Resources, dated December 31, 1987, A.G. No. 99-00092). The latter opinion indicated that “such insurance is in the public interest” because the foster care providers “act in the service of the State” and the foster care “is a necessary function of the Department of Human Resources.” *Id.* That opinion also states that “this office has consistently recognized the need for liability insurance for state employees and has approved such expenditures as being within the authority of the various state departments . . . .” *Id.*

Other opinions approving expenditures for liability insurance for employees or volunteers include: Opinion to J. Daryl Betts, Crenshaw County Hospital Board, dated September 3, 2002, A.G. No. 2002-329 (approving purchase of general and professional liability purchase for staff of hospital owned by nonprofit public corporation); Opinion to Jim Corley, Chairman, Autauga County Commission, dated October 2, 1987, A.G. No. 88-00004 (approving purchase of liability insurance for employees of emergency management communications district); and Opinion to Lister Hill Proctor, State Senator, dated January 14, 1983, A.G. No. 83-00136

(volunteer fire departments should have insurance to cover operation of motor vehicles).

### CONCLUSION

The AEMA and county EMAs may purchase liability insurance on behalf of volunteers serving the SPP program. Such volunteers will be performing a necessary service on behalf of the State or counties to protect public health and safety as directed by the Alabama Emergency Management Act.

### QUESTION SIX

What steps must be taken for AEMA or county EMAs to provide such insurance coverage to such individuals or organizations?

### FACTS AND ANALYSIS

As noted in the discussion of Question 5, above, it is the opinion of this Office that the purchase of liability insurance on behalf of employees or volunteers by agencies at the State, county, and municipal levels is permissible. The information, however, sought in Question 6 again goes beyond the scope of an Attorney General's opinion, and we must respectfully decline to provide what can only be considered legal advice.

That being said, however, it can be noted that the State has a self-insurance fund administered by the Risk Management Division of the Department of Finance. Section 36-1-6.1 authorizes the State Finance Director to establish a liability insurance program or self-insurance fund for "coverage for deaths, injuries, or damages arising out of the negligent or wrongful acts or omissions committed by state employees or agents of the state . . . ." ALA. CODE § 36-1-6.1(a) (2001). The costs of such "shall be paid from the funds appropriated for the operation of the several state departments, agencies, boards, or commissions." ALA. CODE § 36-1-6.1(d) (2001). Section 41-4-300, *et seq.*, establishes the Division of Risk Management within the Department of Finance and charges this Division with administration of the insurance program. ALA. CODE § 41-4-300, *et seq.* (2000).

Counties may self-insure, may purchase insurance, or may join multi-county group insurance funds established pursuant to section 11-30-1 of the

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Code. Insurance options are discussed in an opinion to David Vann, Mayor, City of Birmingham, dated March 12, 1979, A.G. No 79-00114. Determining the appropriate steps to participate in a self-insurance program must be left to the discretion of AEMA or the local EMA agencies.

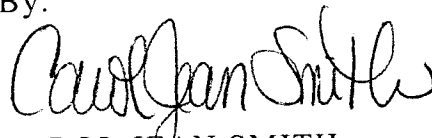
CONCLUSION

The AEMA may purchase insurance through commercial vendors or through the Risk Management Division of the State Department of Finance. Counties may purchase insurance from commercial vendors, from the Risk Management Division of the State Department of Finance, or they may self-insure or participate in a multi-county self-insurance fund.

I hope this sufficiently answers your questions. If this Office can be of further assistance, please do not hesitate to contact Dennis Wright of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:

A handwritten signature in cursive script, appearing to read "Carol Jean Smith".

CAROL JEAN SMITH  
Chief, Opinions Division

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